1947 **File No.** S. Bel. 1/47

Ex. K

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Suits: Belgaum.

Civil Suit No. 457 of 1945.

Mahavir General Trading Co. ..... Pltff

Vs.

(1) The Provincial Government, Bombay;

(2) The Superintendent, Belgaum Central Prison.

Re: For recovery of Rs. 1,099 being the balance of the price of food grains and oil supplied to the Belgaum Central Prison and Rs. 344 as interest at 12 per cent. per annum by way of damages.

P.31/E

File No. S. Bel. 1/47

Std. Scott. Slip 24-B

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R. O. S. No.457
1945.

In the court of the Civil Judge,Senior Division,Belgaum.

1. Mahavir General Trading Co.,
a registered firm, doing business
at Belgaum, Raviwar Peth. } Plaintiff.

Vs.

1. The Provincial Government,Bombay.
2. The Superintendent,Belgaum Central Prison. } Defendants.

Claim Rs.1,443/- both for court-fee and jurisdiction

Herein, the above-named plaintiff begs to state as under:-

1. The Plaintiff firm, at the instance of the Defendant supplied to Belgaum Central Prison at Belgaum 11 tins of oil, 12 bags of gram 8 bags of salt, 11 tins of oil and 52 bags of Bajari, in all worth Rs.1,100/-.The said supply was made from 10-10-1942 to 16-10-1942.Besides, empty gunny bags worth Rs.200/- still remain unreturned with Defendant 2 out of the amount thus due,only Rs.201 are paid.

2. Thus, the principal amount of Rs.1099/- and interest thereon at 12 p.c.from 16-10-1942 till 10-10-1942,viz.Rs.344/- by way of damages and trade custom are due to the plaintiff.

3. Defendant 2 contends that as the Plaintiff failed to supply articles as per requisition, he had to purchase the same elsewhere at high rates.The price of the above articles supplied has been deducted towards the difference.This contention of the defendants is untenable.

4. On the alleged date or dates of failure to supply,there was no completed contract between the plaintiff and the defendants to supply particular quantities of particular article at particular rates.The tenders were called for by Defendant 2 on 12-9-1942 and he intimated to the plaintiff by his letter No. 6643 of 1942 dated 22-10-1942 that the rates quoted by the plaintiff in his tender were accepted by the Inspector-General of Prisons Poona, Thus, the contract became complete when the plaintiff received the said communication and not before.It was, therefore, perfectly open to the plaintiff,either to supply or not to supply whatever quantity he pleased at the rates quoted by the defendants,prior to the said date.

5. The Defendants were bound to make immediate payment on delivery.When the defendants failed to make such payments for the articles delivered,plaintiff was justified in refusing to make further deliveries.

6. Though repeated demands were made for the said amount defendants have failed to pay the same and hence the suit.

7. Due notice of the said claim has been given to both the defendants by registered post on 8-10-1945 and the said notices were addressed to the persons mentioned in para 2 of the said notice.The said notices were duly served on the addresses on 9-10-1945. Copy of the said notice and registered acknowledgment are produced herewith.

8. The cause of action arose from 10-10-42 to 16-10-42 when the deliveries were made and the price fell due.As 60 days of the notice under section 80,C.P.C.are to be excluded in computing the period of limitation, the suit filed today is in time.

10. The suit isvalued for court-fee at Rs.1,443/- for Jurisdiction the valuation is the same.

11. At Belgaum Central Prison is the department of Bombay Provincial Government and as the articles were supplied at the instance of Defendant 2 who is a servant of Defendant,1, both have been impleaded in the suit.

12. Plaintiff, therefore, prays that a decree may kindly be passed against the defendants or responsible defendants for Rs.1,443/-with future interest and costs of this suit.

Laximibai Surendra Mangaj.

Belgaum,)
10th December 1945)

Laxmibai Shantappa Shetti.

*****

We, Laxmibai Bhratar Shantappa Shetti and Laxmibai Bhratar Surendra Mangaj, partners of the plaintiff registered fir, hereby do affirm the above contents in paras 1 to 12 are true as per the information given by Mr.S.P.Sheeti, the managing Agent of the Plaintiff-firm and believed by us to be true.

This verification is made at Belgaum on 10-12-1945.

Laximibai Surendra Mangaj.

Laxmibai Shantappa Shetti.

True Copy

Sd/- D.P.Raut,
Superintendent,
Belgaum Central Prison.

Legal Dept. 3

This relates to the defence of Belgaum Civil Suit No. 457 of 1945. Please see the plaint at page 5 and the Report of the Superintendent, Belgaum Central Prison at p.15. In this case the plaintiffs contend that they supplied to the Belgaum Central Prison certain quantities of foodgrains and oil between 10-10-1942 and 16-10-1942. The price of these articles is stated to be Rs.1100 and in addition the plaintiffs allege that empty gunny bags worth Rs.200 have not yet been returned to them. Deducting Rs.201 paid to them by the Prison authorities the plaintiffs claim from Government the balance of Rs.1099 with interest thereon at 12 per cent.

2. The Prison authorities' defence is that the supplies were to be made by 1.10.1942 and the plaintiffs having failed to do so the articles were purchased in the open market at the prevailing rate and the difference in price had to be recovered from the plaintiffs. The difference was recovered from the amount to be paid to the plaintiffs for foodgrains supplied between 10-10-1942 and 16-10-1942 and a balance of Rs.201-8-4 paid to them. However the bill at p.25 shows that plaintiffs had supplied goods worth only Rs.922-7-6 and not Rs.1100 as alleged in the plaint. This difference is not explained by the Prison Superintendent in his report and therefore it is not clear whether the figures quoted by the plaintiffs are correct or not. The report is also silent as regards the sum of Rs.200 claimed for gunny bags not returned. The papers may therefore be returned to the Superintendent, Belgaum Central Prison with a request to clarify these two points.

15/4/46

A A C R R E 15/4

R C A 18/4/46

Belgaum Civil Suit No. 457 of 1945.

In this suit the plaintiffs contend that they had supplied to the Belgaum Central Prison, certain quantities of food grains and oil between 10.10.1942 and 16.10.1942. The price of these articles is stated to be Rs. 1100 and in addition the plaintiffs allege that empty gunny bags of the value of Rs. 200 have not yet been returned to them. Deducting Rs. 201 paid to them by the prison authorities the plaintiffs claim from Government the balance of Rs. 1099 plus Rs. 344 as interest at 12 per cent by way of damages.

2. The prison authorities' defence is that supplies were to be made on 1.10.1942 and that plaintiffs having failed to do so the articles were purchased in the open market at the prevailing rates and the difference in price was recovered from the amount due to the plaintiffs for the quantities supplied between 10.10.1942 and 16.10.1942 and a balance of Rs. 201-8-4 was paid to them. It is further reported that the value of the goods supplied by the plaintiffs amounts to Rs. 922-7-6 only and not Rs. 1100 as alleged in the plaint and that the empty gunny bags in which the supplies were received were returned immediately to the plaintiffs. It is also stated that the bags were of the value of Rs. 15-8-0 only and not Rs. 200 as alleged.

3. The suit appears to be defensible. The supplies required by the prison were to be delivered every month according to the requisitions issued from time to time by the prison Superintendent. There was a stipulation that if the supplies were not delivered as per requisition, they would be purchased from the market and the plaintiffs would be liable for the difference in price. The plaintiffs failed to deliver certain supplies as per requisition on due date and therefore they were

purchased from the market and the difference in price deducted from the amount payable to the plaintiffs for other quantities supplied subsequently. The plaintiffs are therefore liable.

4. The defence of the suit may be sanctioned on the lines of the accompanying brief and written statement.

RM
3/6/46

A.A.L.R. TR 5/6
R.L.A.
Secy H.D.
Secy H.D. 1-7
15.6

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7-44

In the Court of the Civil Judge, Senior Division,

Belgaum.

Mahavir General Trading Co. ..... Plaintiff.

Vs.

1. The Provincial Government, Bombay.
2. The Superintendent, Belgaum Central Prison. .. Defendants.

Written statement on behalf of the defendants is as follows :-

1. The defendant No. 2 is neither a necessary nor a proper party to the suit.

2. The allegation in paragraphs 1 and 2 of the plaint are incorrect and therefore not admitted. Between 10-10-1942 and 16-10-1942 the plaintiffs had supplied to the Belgaum Central Prison, provisions of the total value of Rs. 922-7-6 only and not Rs. 1100 as alleged by the plaintiff. It is further denied that any empty bags were retained by defendant No. 2. The provisions were supplied in 62 bags which were immediately returned to the plaintiffs and these bags were not worth more than four annas each. The claim of Rs. 200 as price of empty bags is therefore denied.

3. The allegations in paragraph 4 of the plaint are not admitted. When the defendant No. 2 invited quotations for the supply of foodgrains and provisions for the Belgaum Central Prison, it was one of the conditions embodied in the notice issued by him that supplies would have to be made monthly as per requisitibns issued from time to time by the defendant No. 2. The rates quoted by the plaintiffs were accepted on certain conditions, one of which was that supplies not made as per requisitions would be

purchased locally and the difference recovered from the supplies. The plaintiffs had perfectly understood these conditions and had agreed to abide by them. Subsequently when a requisition was made for the supply of 100 bags of Bajri and 16 tins of oil to be delivered on 1st October 1942, the plaintiffs failed to give the delivery on due date and hence the defendant No. 2 was obliged to purchase these quantities from the open market at the prevailing rate. According to the terms of the supply agreed upon by the plaintiffs, they were liable to pay the difference between the market price and the price at which they had undertaken to supply the various commodities. The deduction of Rs. 720-15-2 from the amount payable to them is therefore correct and lawful. Plaintiffs' contentions to the contrary are not admitted.

4. The plaintiffs are not entitled in law to claim any interest for a period prior to the date of the suit.

5. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Belgaum.

I, District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 5 above is true according to the information received and believed to be true. This verification is made at on the day of 1946.

District Government Pleader, Belgaum.

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A 16-9-46

Civil Suit No.457 of 1945.

I S S U E S.

1. Does plaintiff prove that he supplied the articles detailed in para one of the plaint to the deft.No.2 between 10.10.1942 and 16.10.1942 ?
2. If so, what was the price of the said articles ?
3. Does plff. prove that the deft.No.2 has kept with him any and how many empty bags belonging to the plff; if so what is their price ?
4. Do defts. prove that the plff. failed to supply the requisitioned articles; if so, was plff. under any legal liability to supply the requisitioned articles; if so, was deft.no.2 compelled to make the purchases in open market; if so, what is the difference bet. the market rates & the rates agreed upon ? Is deft.no.2 entitled to deduct the difference between the two rates in the sum due to the plff.?
5. Is plff. entitled to claim any and what interest ?

6. What is found due to the plff. on taking accounts and what decree ?

4.9.1946. Sd.M.S.Bagali.

Jt. Civ.Judge,S.D.Belgaum.

No.O.S.457/45.
Belgaum, 12th September 1946.

Copy forwarded with compliments, for information to:

(1). The Collector of Belgaum, with reference to his No.L.A.W.-675, dated 15.2.1946.

(2). The Superintendent,Central Prison,Belgaum, with reference to his No.5534 dated the 22nd August 1946.

(3). The Remembrancer of Legal Affairs,Bombay, with reference to his No.4506 dated the 21st June 1946.

2. The suit is next fixed for filing list of witnesses, on the 19th September 1946.

District Government Pleader,Belgaum.

D 16/7

Received on ....10-12-1945.

Registered on....14-12-1945.

Decided on.....14- 2-1947.

Y. M. D.

Duration..... 1- 2- 5.

In the Court of the Jt. Civil Judge, S.D.,

AT Belgaum.

Reg.Civil Suit No.457 of 1945.

1. Mahavir General Trading Co.,
a registered firm, doing business
at Belgaum, Raviwar Peth. Plff.

Against

1. The Provincial Government, Bombay.

2. The Superintendent, Belgaum Central Prison. Defts.

Claim Rs.1,443/- both for Court fee and jurisdiction.

The plaintiff sues to recover a sum of Rs.1,443/- and costs of suit from the defendants. Plaintiff alleges as follows in the Plaint :- Plaintiff supplied to the Belgaum Central Prison, 11 Tins of Oil, 12 bags of grain, 8 bags of Salt, 11 tins of Oil and 52 Bags of Bajri, in all worth Rs.1100/-, from 10/10/1942 to 16/10/1942; besides, empty gunny bags worth Rs.200/- have remained unreturned with the Deft.No.2. That Plaintiff has been paid Rs.201 only. That the principal amount due comes to Rs.1099/-, that interest on the said amount at the rate of 12% per annum from 16/10/1942 to 10/12/1945 comes to Rs.344/- and that the Plaintiff has therefore claimed Rs.1,443/- in all from the Defts. Plaintiff further alleges that it is the contention of the Deft.No.2 that the plaintiff failed to supply the necessary articles as per requisitions made, necessitating the purchase of the said articles in the market at higher rates. That the difference in the agreed rates and the market rates has been deducted in the price of the articles supplied by the Plaintiff and that the said

said....

said contention was untenable. Plaintiff contends that at the date or dates of the failure to supply the articles there was no completed contract between the Plaintiff and the Defendants to supply particular quantities of goods at particular rates. That tenders were called for by the Deft.No.2 on 12/9/1942 and the latter informed the Plaintiff on 22/10/1942 by his Letter No.6643 of 1942 that the rates quoted by the Plaintiff in his tender were accepted by the Inspector General of Prisons,Poona, that the contract became completed when the Plaintiff received the said communication and not before that till then it was perfectly open to the Plaintiff either to supply or not to supply whatever quantity he pleased at the rates quoted by the Defts. That the Defts. were bound to make immediate payment in delivery. That they failed to make such payments for the articles already delivered. That the Plaintiff was therefore justified in refusing to make further deliveries. That notice under Sec.80 C.P.C. has been given to the Defendants. That the suit was in time as 60 days of the notice are to be excluded in computing the period of limitation and that the cause of action has arisen within the jurisdiction of the Court.Hence the suit.

The Defendants in their W.Statement Ex.11 contend that the Deft.No.2 is neither a necessary nor a proper party to the suit. That the allegations made in paragraphs 1 and 2 of the plaint are incorrect and not admitted. That the Plaintiff supplied goods worth Rs.922/7/6 only between 10/10/1942 to 16/10/1942 and not Rs.1100/-. That the provisions were supplied in 62 bags which were immediately returned to the Plaintiff and these bags were worth about 4 annas each. That when the Deft.No.2 invited quotations for the supply of food grains and provisions for the Belgaum Central Prison, one of the conditions embodied in the Notice issued by him was that the supplies would have to be made monthly as

as per requisitions issued from time to time by the Deft.No.2. That in case the supplies were not made as per requisitions, they would be purchased locally and the difference in price recovered from the supplier. That the Plaintiff agreed to abide by the conditions embodied in the notice. That as he failed to supply the goods requisitioned from him after 16th.October 1942, the Deft.No.2 had to make the purchases elsewhere at higher rates. That he has deducted Rs.720/15/2 from the Plaintiff's bill, being the difference in the prices and paid the balance of Rs.201/-. That Plaintiff was not entitled to claim any interest. That the suit should be dismissed

On the above pleadings, the following issues were framed at Ex.15.

ISSUES.

1) Does Plaintiff prove that he supplied the articles detailed in para one of the plaint to the Deft.2 between 10/10/1942 and 16/10/1942.
2) If so, what was the price of the said articles,
3) Does Plaintiff prove that the Deft.No.2 has kept with him any and how many empty bags belonging to the Plaintiff, if so, what is their price.
4) Do Defendants prove that the Plaintiff failed to supply the requisitioned articles, if so was , Plaintiff under any legal liability to supply the requisitioned articles; if so was Deft.No.2 compelled to make the purchases in open market, if so what is the difference between the market rates and the rates agreed upon? Is Deft.No.2 entitled to deduct the difference between the two rates from the sum due to the Plaintiff.
5) Is Plaintiff entitled to claim any and what interest
6) What is found due to the Plaintiff on taking account and what decree.

FINDINGS.

FINDINGS.

(1) He supplied articles as detailed in Ex.33.

2) Rs.922/7/6. only.

3) 157 for the value of Rs.60/-.

4) Yes;Yes;Yes; Rs.720-15-2; Yes.

5) No.

6) Rs.60/- only as below.

REASONS.

The Plaintiff - Mahavir General Trading Company - appear to be a bogus and fictitious body. The real owner of the firm is Shantappa Padappa Shetti, the so called Manager. He has been examined at Ex.35. He states that his wife and daughter are the partners of the firm and he was the manager. It does not require much imagination to discern the real - facts and the state of affairs. However we are not much concerned with this aspect of the matter. The Deft.No.1 is the Provincial Government of Bombay and the Deft.No.2 - the Superintendent, Belgaum Central Prison. One Mr.Laxton was the Superintendent in the year 1942. On 12/9/1942 he issued a public notice inviting quotations from the merchants for the supply of the various goods and articles required for the Prison Ex.42 is a copy of that notice. It reads as follows :- " Quotation in pounds per rupee are invited with samples by the undersigned at the Prison Office on Thursday the - 24th.September 1942 at 11 A.M. sharp for 6 monthly supply to this Prison, delivery at the Jail gate for the following articles when the merchants are requested to be present for open bidding of the rates." Clauses of the notice read :- " The supplies will have to be made monthly as per requisitions sent by the undersigned from time to time. The quantities mentioned on the over leaf are approximate and subject to the fluctuations according to the increase or decrease in the Prison population during the period of contract." Clause 7 - the last clause - reads :-" The rates of food stuffs when once accepted will be final."

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It is common ground that Shantappa Shetti was present at the Prison Office on 24/9/1942 along with other merchants and offered his bid for Bajri, Sweet-Oil, Wheat, Salt, Onions and Whole Gram. The quantities and the rates were as follows :-

Bajri.	.....	300 to 400 bags at 18 Lbs. per Re:
Sweet-Oil.	.....	7000 Lbs. at Rs.5/12/- per 28 Lbs.
Wheat.	.....	150 to 200 bags at 8 ½ Lbs. per Re:
Salt.	.....	40 bags at Rs.6/4/- per bag of 168 Lbs.
Onions.	.....	12000 Lbs. at 38 Lbs. per Re:
Whole Gram.	.....	3000 " at 11 Lbs. per Re:

His bid was accepted by the Superintendent and a memorandum (of agreement) was drawn up immediately afterwards (Vide Ex.51 copy of the said memorandum). The principal and relevent terms of the agreement are as follows :-

1) Mahavir General Trading Company, Grain Merchant is informed that the undermentioned rates offered by him in the case of the following number of bags of grain etc. are accepted and the cash deposit of Rs.965/- only at Rupee one per bag as required by this Office in the due fulfilment of the order given to him has been received which will be forfeited to Government for failure to duly comply with the order...
Then follow the description of the ~~quantities~~ articles their quantities and rates. What follows next is important. " Supplies not made as per requisitions will be purchased locally and difference recovered from the supplier.

The quantities mentioned above are approximate and subject to fluctuation according to increase or decrease in the Prison population.

The terms and conditions will remain in force for six months i.e. from 1/10/1942 to 31/3/1943.

Below this memorandum, Mr..S.P.Shetti, has made the following endorsement :-

" I perfectly understand the conditions

mentioned ---

mentioned overleaf for the supply of Grain etc. and I agree to abide by them." and put his signature as the Managing Agent of Mahavir General Trading Company,Belgaum, on 29/9/1942. Mr.S.P.Shetti wrote the following letter to the Superintendent :- " We beg to inform you that we will commence supplying the articles of our bidding as and from the 1st. proximo" (Ex.32). Accordingly on 1/10/1942 he supplied 11 Drums of Sweet Oil,27 bags of Wheat and 19 bags of Onions. On 4/10/1942 he supplied 59 bags of Bajri and on 6/10/1942 he supplied 5 bags of Salt.(Vide page 137 of the Stores Requisitions Receipt Book,Ex.45) The price of these goods came to Rs.1659/11/10 and the amount was paid on 10/10/1942 (Vide Ex.34) Then on - 10/10/1942 he supplied 11 Drums of Sweet Oil, on 14/10/1942 he supplied 11 Drums of Sweet Oil and 8 bags of Salt and on 16/10/1942 he supplied 52 bags of Bajri (Vide page 137 of Ex.45). In para 1 of the plaint, the Plaintiff has in addition to the articles mentioned above stated that he has supplied 12 bags of Gram. The bill (Ex.33) includes 460 Lbs. of Whole Gram, amongst the articles supplied by the Plaintiff on 10/10/1942. So for the purpose of this suit I assume that the Plaintiff did supply 460 Lbs. of Whole Gram on 10/10/1942. As per Ex.33 the price of the articles supplied by the Plaintiff from 10/10/1942 to 16/10/1942 comes to Rs.922/7/6. The Plaintiff has not supplied any materials from which it could be said that the price of the articles came to Rs.1100/-. Mr.Shetti stated in his cross examination at Ex.35 :-" I cannot say how I calculated the price of the articles at Rs.1100/-. I do not remember. The agreement was that price should be paid on weight. I admit the weight of the articles mentioned in Ex.33. I also admit the rates mentioned in the said exhibit.I admit the total price of Rs.922/7/6 mentioned in Ex.33" This disposes of the first two issues.

It appears that on 20/10/1942 the Plaintiff sent a letter to the Superintendent complaining about the defects in the scale used in the Jail and asking for payment of the price of the goods supplied from 10/10/1942 to 16/10/1942. Ex31 is therefore reply of the Superintendent to the said letter. The relevent portion of which reads as follows :- " You have not completed the supply of this Office requisitions dated 8/10/1942 and 20/10/1942. Kindly arrange to send the following today or else the same will be purchased at your risk without further reference to you.

100 Bags of Bajri.
75 " " Wheat.
20 Drums of Sweet Oil.

Further, I may inform you that the rates offered by you for the following articles have been accepted by the Inspector General of Prisons,Poona, except that of Salt." We do not know what reply the Plaintiff gave to this letter, but it is an admitted fact that he did not supply any further articles. The records of the Jail show that the Superintendent purchased 57 Bags of Bajri and 16 Drums of Sweet Oil on 25/10/1942 from one R.V.Raut and 43 bags of Bajri from one M.S.Modgi on 30/10/142 (Vide page 138 of Ex.45) In the case of the Sweet Oil the rate was Rs.7/11/- per 28 Lbs. and in the case of 57 bags of Bajri the rate was 12 Lbs. per Rupee and in the case of 43 bags , the rate was 11½ Lbs. per Rupee (Vide Ex.43 and 44 and also page 138 of Ex.45). On 30th.October 1942 the Superintendent paid Rs.201/8/4 to the Plaintiff after deducting Rs.720/15/2, being the difference in the agreed rate and the rates at which 100 bags of Bajri and 16 drums of Sweet Oil were purchased. The agreed rates were 18 Lbs. per Rupee of Bajri and Rs.5/12/- per 28 Lbs. of Sweet Oil. The difference in the rates works out at Rs.720/15/2 as stated in Ex.33. The

accounting----

accounting was not challenged by or on behalf of the Plaintiff.

The Plaintiff has put forth two excuses in the plaint for not supplying the goods as per requisitions made by the Superintendent on 8th. and 20th.October 1942 The first is that there was no concluded agreement - between him and the Deft.No.2 at the dates of his refusal to supply and the second is the failure of the Deft.No.2 to pay for the articles already delivered. I think there is no substance in either of these two pleas. Neither in the Notice calling for quotations Ex.42 nor in the Memorandum of agreement(Ex.51) is - there any clause or condition to the effect that the agreement would be complete if and when it received the sanction of the Inspector General of Prisons. It is significant to note that the Plaintiff commenced supplying the articles from the 1st.October without waiting for the sanction of the Inspector General of Prisons. - There is no evidence to show that when the Superintendent called upon him to supply 100 bags of Bajri, 75 bags of Wheat and 20 drums of Sweet Oil by his letter dated the 22nd.October as per requisitions made on 8/10/1942 and 20/10/1942 the Plaintiff refused on the ground that there was no concluded or enforceable agreement between him and the Superintendent. As stated by Mr.Laxton in his deposition at Ex.40, there are two mehtods of making the purchases for the Jail. In Chapter XXXV (Dietary) of the Bombay Jail Manual Part I (revised edition 1944) the two mehtods have been given under Rule 863 and 864. Rule 863 reads as follows :- " If provision is arranged departmentally, the Superintendent is responsible for making purchases at times of the year when rates are most favourable and for safely storing sufficient food stuffs to last during periods when prices are highest." Rule 864 reads :- If provisioning is to be carried out by contract,

tenders ----

tenders will be called for at such times and for such periods as the Inspector General may order. Tenderers are required to deposit earnest money before their offers are considered. The amount of such money will vary according to the magnitude of the contract and will be fixed by the Inspector General in each case. It must be paid into the Treasury by the tenderer and the chalan attached to the tender. All tenders must be submitted by the Superintendent with his recommendations to the Inspector General whose decision shall be final. The successful tenderer will be required to sign an agreement in the prescribed form and to furnish adequate security for the satisfactory performance of his contract. Earnest money will be returned to unsuccessful tenderers immediately the orders of the Inspector General are received and to the successful tenderer as soon as he has signed the agreement and furnished security."

Mr.Laxton, the then Superintendent says that he issued the notice(Ex.42) and took the memorandum (Ex.51) under Rule 863 and not 864. I am inclined to believe him. By notice Ex.42, the Superintendent asked for quotations and not tenders. He has not followed the procedure laid down in Rule 864 and has not taken the agreement in prescribed form. The Superintendent was arranging provisioning departmentally and therefore he was the final authority in the matter of his agreement with the Plaintiff. That is perhaps the reason why the memorandum of agreement (Ex.51) is informal and not in the prescribed form and on a stamp paper. In this connection, paragraph 6 of the Superintendent's letter Ex.31 was referred to by the Plaintiff's Pleader and relied upon. Therein he says " I may inform you that the rates offered by you for the following articles have been accepted by the Inspector General of Prisons,Poona, except that - - -

that of Salt." Mr.Laxton explains that as an administrative routine he had informed the I.G.P. about the rates and communicated to the Plaintiff the reply he got from the Office of the I.G.P. It is possible that the Superintendent requires the sanction of the I.G.P. for the rates by way of caution though he was not legally bound to. Even supposing for the sake of agreement that the agreement was subject to sanction by the I.G.P. the latter had given the necessary sanction prior to 22/10/1942 and this was communicated by the Superintendent to the Plaintiff by Ex31 and the latter was called upon to supply the goods as per requisitions already made. It is clear from this that when the Plaintiff failed to comply with the requisitions there was already concluded agreement. There is no force in the contention of the Plaintiff that in as much as the Superintendent failed to pay for the articles supplied immediately, he was justified in refusing to supply further goods. For the articles supplied on 1/10/1942, 4/10/1942 and 6/10/1942, the Plaintiff was paid on 10/10/1942. For the articles supplied on 10/10/1942,14/10/1942 and 16/10/1942, the Plaintiff would have been paid within about a week's time from the last date therefore his failure to supply the articles as per Superintendent's letter Ex.31 neither in Ex.42 nor in Ex.51 is there any clause regarding the time of the payment of the price of the goods supplied. The Plaintiff was delaing with a Department of Government. There could not have been any doubt in Plaintiff's mind regarding the payment of his bills. Ordinarily it requires a few days for the bills to be verified and passed and payments made. It is only in the case of unreasonable delay in passing the bills that complaints could legitimately be made.

Another ---

Another point was made at the hearing though not in the plaint. The notice Ex.42 mentions."Six monthly." supply to the Prison. Clause 5 in Ex.42 reads " The supplies will have to be made monthly as per requisitions sent by the undersigned from time to time. The quantities mentioned on the overleaf are approximate and subject to the fluctuation according to the increase or decrease in the Prison population during the period of contract." Clause 9 in Ex.51 reads -" The terms and conditions will remain in force for six months from 1/10/1942 to 31/3/1943. Ex.51 mentions the quantity of the different articles which the Plaintiff undertook to supply. That is 300 to 400 bags of Bajri, 150 to 200 bags of Wheat and 7000 Lbs.Sweet Oil. Between 1/10/1942 to 16/10/1942, Plaintiff had supplied 111 bags of Bajri 27 bags of Wheat and 1236 Lbs. of Sweet Oil. It was agreed that this supply was more than one month's quota and that the Superintendent was not justified in requisitioning any more Bajri,Wheat or Sweet Oil in the month of October 1942. I do not think that there is much force in this arguement. It is not permissible to divide the total quantity of the articles to be supplied by the number of months within which it was to be supplied and argue that the Superintendent could not have requisitioned more than one month's quota arrived at by the above method in any given month. Clause 5 of Ex.42 and 6 of Ex.51 are a complete answer to this line of reasoning. It is in evidence that the Prison population was increasing rapidly in September and October 1942 on account of what is termed as the "Quit India" movement of that year and the Superintendent was within his rights to requisition the articles he bid by his letter Ex.31. The main reason for the Plaintiff's non-compliance with the requisitions was apparently the rising tendency in the prices of the commodities on

account - -

account of both war conditions and the disturbed state of the country at that time. Plaintiff is hiding that fact and trying to throw the blame on the shoulder of the Superintendent.

Now coming to the Plaintiff's claim of Rs.200/- for empty gunny bags, it is significant to note that in the Lawyer's notice given by him on 3/11/1942 to the Superintendent, he claimed Rs.100/- only as the price of the said bags. Para 4 of his notice reads as follows :- You have also my client's empty gunny bags worth about Rs.100/- with you."(Ex.48) Now this claim came to be doubled in the notice of suit. (Ex.24) and in the plaint is a matter of mystery. However, in the reply which the Deputy Superintendent gave to the Plaintiff's Pleader on 25th.March 1943, he states that the Manager of Messers Mahavir General Trading Company was informed orally to remove his empty gunny bags at any time. He may take the bags whenever he desires during Office hours."(Vide Ex.38) It is clear from this letter that as late as March 1943 some empty gunny bags belonging to the Plaintiff had remained in the Prison and that the Prison authorities were ready and willing to hand them over to the Plaintiff. The Superintendent Mr.Laxton, says in para 4 of his deposition at Ex.40 that he has no personal knowledge of whether the empty gunny bags of the Plaintiff have been returned to the Plaintiff or not. The work of returning the bags is done by the Ration Clerk. The latter is examined at Ex.41. In his examination -in-chief he stated that the Plaintiff had taken away all the empty bags, but in his cross examination he made the following statement. " No record is maintained regarding the return of of the empty bags. I cannot say definitely when these were returned. As the Plaintiff complains that his bags

have - -

have not been returned, I say that some may have remained through over sight. We have not returned any empty bags to the Plaintiff after Ex.38. The total number of bags which may have remained unreturned comes to 157 (111 bags of Bajri, 27 bags of Wheat and 19 bags of Onions) Plaintiff's Manager admits in his deposition that Salt is supplied with the bags i.e. the bags are not to be returned. There is no satisfactory evidence to show as to the state of empty bags. I am not inclined to believe the Plaintiff's Manager when he says that the rate was Rs.70/- to 80/- per 100 bags in 1942. This is, however, for new ones. He admits that all the bags in which he supplied the articles were not new ones. I hold that all the 157 bags have remained in the Jail. There is no evidence to show that they have been returned. I take the price at about Rs.40/- per 100 and allow Rs.60/- to the Plaintiff.

I record my findings as above upon the issues framed and pass the following order.

ORDER.

Deft. No.1 to pay to Plaintiff the sum of Rs.60/- to the Plaintiff and proportionate fees. Plaintiff to pay the Defts' fees on the claim disallowed i.e. Rs.1365/-.

Sd/ M.S. Bagali.
Civil Judge, S.D.,
Belgaum.

15/2/1947.

Subject:-- Suit No. 457 of 1945.
The Mahavir Trading Co. ltd. Vs. The Province of Bombay.

No.L.A.W.-675
Belgaum, 14th March 1947.

To

The Remembrancer of Legal Affairs, Bombay.

Ref. Your No.2064 of 1-3-1947.

The suit was decided on 15-2-1947 by the Civil Judge Sr. Dn., A decree for Rs.60/- only has been granted to the plaintiff as the price of 157 empty bags remaining with the Deft. No. 2 the Supdt. of Central Prison, Belgaum. There is no evidence oral or documentary to show that 157 gunny bags which appear admittedly on record to be remaining with Deft No.2 were ever returned to plaintiff. Hence a sum of Rs. 60/- awarded by the court as cost of 157 bags seems to be reasonable. In the circumstances, no appeal should be preferred against the decree in question.

The uncertified copy of the judgment is sent herewith. The decree has not yet been drawn up. An uncertified copy of the same will be sent as soon as it is drawn up.

The District Government Pleader, has already submitted his opinion on this case to you under his letter No.O.S.457 of 24-2-47.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 332
Sub No. A/26-34
Branch

Collector of Belgaum.

3329

(15-3-47)

Submitted with p/s

15-3

S.A.S : This relates to Belgaum suit No. 457 of 1945 in which a decree for Rs 60 only was passed in plaintiff's favour. The deft was ordered to pay Rs. Rs 1443-00 (see p. 35 ante) in the circumstances stated by the Collector overleaf, but result may be discussed if and when needed.

20/3/47

A.C.R. 20/3

R.L.A

Where is the case? Please discuss if necessary

3329

15-3-47.

Submitted with R/S

Dossier

15-3

S.A.S : This relates to Budgaum Suit No. 457 of 1945 in which a decree for Rs 60 only was passed in plaintiff's favour. No. demur was for Rs. Rs 1443-00 (see f. 315 ante) the 1st circumstances created by the Collector overlap, the result may be discussed in due course.

20/3/47

A.C.R. R.E. 20/3

R.L.A

Suits.

Belgaum.

For recovery of Rs. 1,099 being the balance of the price of food grains and oil supplied to the Belgaum Central Prison and Rs. 344 as interest at 12 per cent. per annum by way of damages.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4507.

Bombay Castle, 21st June 1946.

Letter from the Collector of Belgaum, No. L.A.W. 675, dated the 15th February 1946—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 457 of 1945.

Mahavir General Trading Co. ... ... Plaintiff;

versus

(1) The Provincial Government, Bombay; (2) The Superintendent, Belgaum Cental Prison ... Defendants.

Claim—Rs.

Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L. S. T. 358, dated the 3rd May 1946—Forwarding the above with his concurrence.

MO-III Bk Leg H 29—1

Letter from the Superintendent, Belgaum Central Prison, Belgaum, No. 1892, dated 15th March 1946—Forwarding his report.

Letter from the Inspector General of Prisons, Province of Bombay, Poona—Forwarding the above with concurrence.

x destroyed

Memorandum to the District Government Pleader, Belgaum, No. 4506, dated the 21st June 1946—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R., No. 4507, L. D., dated the 21st June 1946.

To

*The Home Department,
*The Commissioner, Southern Division,
The Inspector General of Prisons, Province of Bombay, Poona,
*The Collector of Belgaum,
The Superintendent, Belgaum Central Prison, Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1946.

Copy forwarded for information and guidance to

BELGAUM CIVIL SUIT NO. 457 OF 1945.

Chronological Statement of Facts.

1. In this suit the plaintiffs claim from Government a sum of Rs. 1,443 as follows :—

	Rs.	
	1,100	Price of foodgrains and oil supplied to the Belgaum Central Prison from 10th October 1942 to 16th October 1942.
	200	Price of empty gunny bags not returned.
	344	Interest by way of damages at 12 per cent.
	1,644	
Less	201	Received from the Prison authorities.
Balance	1,443	

P. 21, 2. In September 1942, the Superintendent, Belgaum Central Prison, issued a notice inviting quotations for supplying to the Prison certain quantities of foodgrains, oil and provisions. Paragraph 5 of the notice provided that supplies were to be made monthly as per requisitions issued by the Prison Superintendent from time to time.

3. On 24th September 1942, the rates quoted by the Mahavir General Trading Co. (the plaintiffs) for the supply of the required commodities of Bajri, sweet oil, wheat, salt, onions and whole gram were accepted by the prison authorities

P. 17. and on the same day, a memorandum to that effect stating the conditions under which the commodities were to be supplied was addressed to the plaintiffs. It contained a stipulation that supplies not made as per requisition would be purchased locally and the difference recovered from the plaintiffs. At the foot of this memorandum, Mr. S. P. Shetti, the Managing Agent of the plaintiff signed an endorsement to the effect that he had perfectly understood the conditions of the supply and had agreed to abide by them.

4. Thereafter, a requisition for the supply of 100 bags of bajri and 16 tins of sweet oil was made and the plaintiffs were asked to supply these quantities by 1st October 1942. The plaintiffs failed to give delivery on the due date and hence the required commodities were purchased from the market at the rates then prevailing. Between 10th October 1942 and 16th October 1942 the plaintiffs delivered certain quantities of sweet oil, bajri, salt and whole gram of the total value of Rs. 922–7–6. Out of this amount the Prison Superintendent deducted a sum of Rs. 720–15–2 as the difference between the price at which the plaintiffs had agreed to supply 100 bags of bajri and 16 tins of oil and the price at which they were purchased in the market. A balance of Rs. 201–8–4 was paid to the plaintiffs on 30th October 1942.

5. On 9th October 1945, the plaintiffs delivered notice of suit and on 10th December 1945 they filed this suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. There appears to be some dispute regarding the value of the commodities supplied by the plaintiffs from 10th to 16th October 1942. According to the Prison Superintendent, these commodities were of the value of Rs. 922–7–6 and not Rs. 1,100 as alleged by the plaintiffs. The Prison

Superintendent also does not admit the item of Rs. 200 as price of empty bags. According to him these empty bags were immediately returned to the plaintiffs on receipt of the provisions at the gate of the jail and these bags which were 62 in number were not worth more than four annas each. These are questions of fact. The District Government Pleader should consult the Prison Superintendent and lead all available evidence to prove the latter's averments.

2. The main question is whether the Prison Superintendent was entitled to deduct Rs. 720 from the amount payable to the plaintiffs on the ground that the plaintiffs had failed to give delivery on due date of the supplies requisitioned. The plaintiffs contend that on the "date of the failure of supply" there was no concluded contract between them and the defendants "to supply particular quantities at particular rates" because the rates quoted by the plaintiffs were accepted by the Prison Superintendent by his letter No. 6643, dated 22nd October 1942 (see plaint paragraph 4). The letter to which the plaintiffs refer is not included in the papers of the case but at all events, the contention does not appear to be correct. The notice inviting quotations for the supply provided that the supplies would have to be made as per requisitions issued from time to time by the Prison Superintendent. As the Memorandum of 24th September 1942 shows one of the conditions on which the plaintiffs quotations were accepted was that supplies not made as per requisitions would be purchased locally and the difference recovered from the plaintiff. The plaintiffs have agreed to abide by this condition. Consequently the plaintiffs were bound to deliver the required quantities on 1st October 1942 and their failure to comply with this requisition must render them liable for the difference in the price quoted by them and the market price. There seems no force in the contention that prior to 22nd October 1942 the plaintiffs were at liberty either to supply or not to supply whatever quantities as they were pleased.

3. The plaintiffs have claimed interest as 12 per cent. per annum for a period prior to the date of the suit. Such interest cannot be paid unless there is an agreement for the payment of interest at a fixed rate, or it is payable under a usage of trade having force of law or under the provisions of any substantive law. (Bengal Nagpur Railway *v.* Ruttanji 40 Bom. L. R. 746). The plaintiff has claimed interest by way of damages and also trade custom. However, the case just cited also decides that no interest can be awarded by way of damages for wrongful detention of a debt. The existence of the alleged trade custom should be denied and plaintiffs should be called upon to adduce strict proof thereof.

4. The defendant No. 2 (Prison Superintendent) is neither a necessary nor a proper party to the suit. The court should be moved to delete his name.

Suits.

Belgaum.

For recovery of Rs.1,099 being the balance of the price of food grains and oil supplied to the Belgaum Central Prison and Rs.344 as interest at 12 per cent. per annum by way of damages.

Government of Bombay,
Legal Department,
Resolution No. 318
Bombay Castle, 21st May 1947.

Read Government Resolution, Legal Department, No. 4507, dated the 21st June 1946.

Letter from the District Government Pleader, Belgaum, No. O.S. 457, dated the 24th February 1947 - Forwarding the uncertified copy of the judgment and stating that the suit noted in the margin was decided by the Joint Civil Judge, Belgaum, on 15th February 1947, when the following order was passed:-

In the Court of the Civil Judge(Senior Division), Belgaum. Civil Suit No.457 of 1945. Mahavir General Trading Co. .. Plaintiff; versus 1. The Provincial Government, Bombay; 2. The Superintendent, Belgaum Central Prison .. Defendants. Claim - Rs.	" Defendant No.1 to pay to plaintiff the sum of Rs.60/- [illegible] and proportionate fees. Plaintiff to pay the Defendants' fees on the claim disallowed i.e. Rs. 1383/-".

Letter from the Collector of Belgaum, No.L.A.W.675, dated the 14th March 1947. Stating that no appeal should be preferred against the decree passed.

Resolution.- The result of the suit is recorded.

By order of the Governor of Bombay,

Original R.M. Mehta
R.M. MEHTA,
Assistant Secretary to Government.

To,

The Home Department,
The Commissioner, S.D.,
The Inspector General of Prisons, Province of Bombay, Poona,

The Collector of Belgaum,
The Superintendent, Belgaum Central Prison, Belgaum.

20/5

Ms.20.5.

Issued for signature.

21/5

KBB 21/5

S.D.S.

Belgium

Rebel after recognition

File in S. Belgium/W. Belgium (New Lk)

KBB
2/5

RS